IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.Rev.Pet.No. 2996 of 2007()

CRA.165/2000 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CC.410/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD

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REVN. PETITIONER: APPELLANTS/ACCUSED

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1. ABDUL SAMAD,S/O. AHAMMADALI,
   ELIPPAKONATHU VEEDU,
   KOZHUKANKKAKOM,ANAD MURI, THENNOOR VILLAGE.

2. IIIIAS,
   S/O. ABDUL RASAK,
   VARUVILA VEEDU,
   KOCHUKARIKKAKAM, ANAD MURI, THENNOOR VILLAGE.

3. SHAMMEM,
   S/O. IIIIAS KUNJU,VARUVILA VEEDU,
   KOCHUKARIKKAKAM,ANAND MURI, THENNOOR VILLAGE.

BY ADV. SRI.V.N.GOPALAKRISHNAN NAIR
SRI.G.SURARSHAN

RESPONDENTS:

STATE REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. 2996 of 2007

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Dated, this the 10th day of August 2007

ORDER

Revision petitioners who are accused in C.C. 410 of 1996 on the file of the J.F.C.M., Nedumangad challenge the conviction entered and the sentence passed against them for offences punishable under Section 447 read with Sec. 34 I.P.C.

2. The case of the prosecution can be summarised as follows:-

At about 1 a.m. on 30-6-1996 accused Nos. 1 to 3 out of their previous enmity towards P.W.1 and in furtherance of their common intention to cause hurt to him criminally trespassed into his property and demolished the eastern compound wall causing a loss of Rs. 25,000/- to P.W.1.

2. On the side of the prosecution 8 witnesses were examined as P.Ws 1 to 8 and 9 documents were got marked as Exts.P1 to P9 and three material objects were marked as MOs 1 to 3.

3. After the close of the prosecution evidence when the accused were questioned under Section 313 (1)(b) Cr.P.C. they denied the incriminating circumstances put to them and maintained

their innocence. They did not adduce any defence evidence.

4. The learned Magistrate , after trial, found the revision petitioners guilty of the offences punishable under Sections 447 and 427 read with Sec. 34 I.P.C. For the conviction under Sections 447 and 427 I.P.C. each of the accused was sentenced to pay fine of Rs. 5,000/- and Rs. 1,000/- respectively with a default sentence of simple imprisonment for one month. A sum of Rs. 3,000/- was directed to be paid as compensation to P.W.5, the owner of the property. On appeal preferred by the revision petitioners as Crl.Appeal 165 of 2005 before the Addl.Sessions Court Fast Track - I, Thiruvananthapuram the conviction and sentence against the revisions petitioners were confirmed. Hence this revision.

5. The learned caounsel for the revision petitioners made the following submissions in support of this revision:-

The Annexures produced along with the revision will go to show that from 30-6-1996 to 3-7-1996 A1 was an inpatient in A.J. Hospital, Kazhakkootam which was formerly Sini Medical Centre in connection with a surgery. The said documents were produced by the revision petitioners before the lower appellate court but not received in evidence.

6. I am afraid that I cannot agree with the above

submissions. The trial court which had the unique advantage of seeing the witnesses and assessing their credibility was inclined to accept the prosecution evidence while convicting the accused. If, as a matter of fact, the first accused was hospitalised in connection with a surgery from 30-6-1996 to 4-7-1996 as he contended for the first time in appeal, that would have been the best evidence available to him and he would not have, in the normal course, hesitated to produce the documents in support of the plea of alibi. No such document was produced before the trial court. Even assuming that the above documents could be looked into and relied on, it only shows that he was admitted in the hospital on 30-6-1996 and discharged on 3-7-1996. It does not show the date of surgery, if any, undergone by him. The occurrence in the present case was at 1.a.m. on 30-6-1996. The first accused who was setting up a plea of alibi was bound to prove the said defence to the hilt. Merely by showing that the hospital record indicate that he was an inpatient in a hospital at Kazhakkootam on 30-6-996, it cannot be straightaway concluded that he could not have participated in the occurrence on the same day at 1 a.m. at Peringammala which is not a far away place . Under these circumstances, the lower appellate court was justified in refusing to receive the addition documents sought to be produced as

additional evidence. The conviction recorded by the courts below is after an evaluation of the oral and documentary evidence in the case and same cannot be dislodged by this Court sitting in the rarefied revisional jurisdiction of this court under Section 397 and 401 Cr.P.C. I therefore confirm the conviction recorded against the revision petitioner. The sentence imposed on the revision petitioner also cannot be said to be excessive or disproportionately harsh. The courts below have only imposed a sentence of fine. If at all the courts below have erred that was on the side of leniency in not awarding imprisonment.

This revision is accordingly dismissed.

V. RAMKUMAR,
(JUDGE)

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